

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 47 (S/S) of 2003
(Old No. 664 of 1991)

Madan Chandra Bhandari
S/o Late Sri Hari Nandan Bhandari
Presently functioning as Junior Engineer
(Mechanical), Temporary Departmental
Construction Unit, Public Works Department
Nainital.

.....Petitioner

Versus

1. State of U.P. through the
Secretary, P.W.D., Vidhan Bhawan
Lucknow.
2. The Engineer-in-Chief, U.P.
Public Works Department
Lucknow.
3. The Chief Engineer (Building)
U.P. Public Works Department
Lucknow.

.....Respondents

Shri A.K. Sharma, learned counsel for the petitioner.

Shri H.M. Raturi, learned Standing Counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, the petitioner has sought writ in the nature of mandamus, commanding respondents to give benefit of the judgment and order dated 18.05.1987, passed by Lucknow Bench of Allahabad High Court in writ petition No. 2412 of 1980, to him as the case of present petitioner is similar to the petitioner (Sardar Mukhtar Singh Dhillon) of said case.

2. Heard learned counsel for the parties and perused the record.

3. Brief facts of the case the that petitioner was appointed as ex-cadre Superintendent (E/M) on a fixed pay scale of Rs. 172/- per month with usual allowances, vide order dated 21.07.1965 (copy of which is annexure-3 to the writ petition). Thereafter the petitioner was provisionally appointed as temporary Overseer (now the designation is known as Junior Engineer) in the pay scale of Rs. 120-250, vide order dated 22.12.1965 w.e.f. 01.08.1965. Both these orders were passed by Chief Engineer (Appointing Authority) subject to approval of the U.P. Public Service Commission. It is stated in the para-6 of the writ petition that vide G.O. dated 28.03.1966 (copy of which is annexure –6 to the writ petition), post of Overseer was excluded from the purview of U.P. Public Service Commission. It is further stated in the writ petition that vide letter dated 23.03.1967 (copy of which is annexure-7 to the writ petition), the Secretary of the Commission, informed the Chief Engineer not to send the papers for approval of the appointment of Overseers, as they have been taken out from the purview of the Commission. Later on, again vide order dated 07.07.1967, the post of Overseer was brought within the purview of the Commission. Copy of said G.O. is annexure-8 to the writ petition. The appointment of the petitioner is said

to have been made under U.P. Public Works Department Sub-ordinate (Mechanical) Engineering Service Rules, 1965 (copy annexure-9 to the writ petition). Petitioner has claimed that he continued in service and was formally confirmed w.e.f. 01.03.1989. It is stated in the writ petition that similarly situated Overseer Sardar Mukhtar Singh Dhillon, who was appointed as Overseer, in the year 1964, filed a writ petition No. 2412 of 1980, before Lucknow Bench of Allahabad High Court. After hearing the parties, said writ petition was decided vide judgment and order dated 18.05.1987 (copy annexure-1 to the petition), in which following order is passed:-

“It is, therefore, ordered that the petitioner became a regularly appointed candidate on the post of Overseer on 24.09.1965 and he became confirmed on 24.09.1967. The State of U.P. and the Chief Engineer shall give him all service benefits accordingly and shall consider him for promotion from the date when the person junior to him was promoted. In considering as to who was junior to him the date of regularization and the date of confirmation according to this judgment and the Rule shall be kept in view.”

Before giving directions, quoted above, the court made following observations in one of its para :-

“The learned State Counsel argued that proper procedure was not followed even during the period of two years for appointment and so the

petitioner continued to be ad-hoc. In fact no procedure was required to be followed at the time when no Rules for recruitment were framed during this period and according to the previous rules Chief Engineer was the appointing authority. Therefore, it should be inferred that the petitioner appointed by the Chief Engineer became a regularly appointed candidate when the Chief Engineer became entitled to appoint an overseer without consulting Public Service Commission and without following any other procedure and when he retained the petitioner in service even under these circumstances, the petitioner became a regularly appointed candidate on 24.09.65 when the posts were taken out of the purview of the U.P. Public Service Commission.

The recruitment Rules provide for a period of probation. According to Rule 20 probation period is two years. Under Rule 21 it can be extended for special reasons to be recorded in writing for a period not exceeding one year. Any further extension beyond a period of one year can only be made with the sanction of the Governor. The petitioner's period of probation was never extended by the Governor and the Chief Engineer never extended it by recording any special reasons in writing. When it was not possible to extend the period beyond two years without recording reasons, which were never recorded,

the petitioner became confirmed after the expiry of two years, i.e. on 24.09.67.”

4. It appears that State went in appeal against the aforesaid judgment and order, delivered by Allahabad High Court in Sardar Mukhtar Singh's case and moved Special Leave Application No. 790 of 1988. However, said SLP was dismissed vide order dated 16.02.1988 on the ground that the same was barred by limitation. The view taken in aforesaid case by Allahabad High Court, was affirmed by Division Bench also of the same court in another writ petition No. 10589 of 1989, Ashwani Kumar Vs. State of U.P. and others.

5. Learned Standing Counsel failed to show that the petitioner's case is different to that of Sardar Mukhtar Singh.

6. This writ petition was in fact earlier allowed by Allahabad High Court, vide its judgment and order dated 23.11.2000. Learned counsel for the petitioner submitted that arguments in the writ petition were heard by Allahabad High Court in the year 1997 and the judgment came only on 23rd of November 2000, soon after the creation of State of Uttarakhand. It appears that State went in appeal against the judgment and order, passed by Allahabad High Court on 23.11.2000. Civil appeal No. 629 of 2003, was admitted by the Apex Court. It is submitted by the learned

counsel for the petitioner that the order dated 23.11.2000, was set aside by Apex Court as Allahabad High Court had no jurisdiction in the matter w.e.f. 09.11.2000. The said appeal was disposed of on 23.01.2003, with the following direction:-

“-----appeal is allowed, impugned order passed by High Court is set aside and the matter is remitted to the High Court of Uttaranchal for deciding it on merits within a period of four months from the date of receipt of the writ. It is made clear that State U.P. would continue as party respondent.

Learned counsel for the respondent seeks leave to add State of Uttaranchal as party respondent in the original writ petition. Permission granted. It is also made clear that till the disposal of the writ petition by the High Court, with regard to the service of the respondent, State of Uttaranchal would maintain status quo as of today.”

7. In compliance of aforesaid order, this writ petition was heard by this Court on merits and for the reasons as discussed above, earlier in the body of this judgment, the writ petition is allowed. The respondents are directed to consider the case of the petitioner for his notional promotion and consequential benefits, from the date when the person junior to him was promoted within a

period of three months from the date of
production of certified copy of this order.

(Prafulla C. Pant, J.)

Dt. 29.10.2007

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